

Before the  
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GENERAL COUNSEL  
OF COPYRIGHT

JAN 8 1997

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In re: Determination of Statutory	)	
License Terms and Rates for Certain	)	No. 96-5
Digital Subscription Transmissions	)	CARP DSTR
of Sound Recordings	)	

**OPPOSITION OF DIGITAL CABLE RADIO ASSOCIATES TO THE MOTION  
OF THE RECORDING INDUSTRY ASSOCIATION TO COMPEL SERVICES  
TO IDENTIFY TO WHICH REQUEST EACH PRODUCED DOCUMENT  
IS RESPONSIVE**

Digital Cable Radio Associates ("DCR"), by its attorneys and pursuant to 17 U.S.C. § 801(c) and to Section 251.45 of the Rules of the Copyright Office, 37 C.F.R. § 251.45, and the Copyright Office's Order of November 27, 1996 ("the Order"), hereby opposes the above-captioned motion of the Recording Industry Association of America ("RIAA").

The RIAA's motion to compel ("Motion") requests DCR to specify the request to which each of the documents it has produced is responsive. DCR does not believe that the rules require it to identify documents in the manner requested by the RIAA. Nevertheless, reserving the right of its witnesses to testify on the basis of their general knowledge and experience, DCR has identified the documents responsive to each of the RIAA's requests.<sup>1/</sup> For the convenience of the Copyright Office, these responses are summarized as follows:

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<sup>1/</sup> These are set forth in the letters of Fernando R. Laguarda to Steven M. Marks attached to the RIAA's Motion at Tab M and Tab Q.

- Request No. 15: DCR provided the executed version of the Time Warner affiliation agreement following the testimony of David J. Del Beccaro (see also DCR0000946-947);
- Request No. 36: Tab 1-A following the testimony of Lou Simon (see also DCR0000732-738);
- Request No. 38: DCR0000721-723;
- Request No. 40: Tab 3 following the testimony of Lou Simon (see also DCR0000739-749);
- Request No. 41: Tab 4 following the testimony of Lou Simon (see also DCR0000726-729); and
- Request No. 43: As noted previously, no responsive documents were included in DCR's Direct Case;<sup>2/</sup> documents subsequently produced are for purposes of corroborating Mr. Simon's testimony.

In addition, and with the same reservations, DCR has identified those of its documents relied upon by John R. Woodbury, Ph.D. responsive to each of the RIAA's requests.<sup>3/</sup> For the convenience of the Copyright Office, these responses are summarized as follows:

- No. 8: Dr. Woodbury relied upon his general knowledge and the testimony of Lou Simon; and
- No. 10: Dr. Woodbury relied upon his general knowledge and the testimony of David J. Del Beccaro.

DCR has identified all documents responsive to the RIAA's specific requests, but Dr. Woodbury is free under the rules to rely on any materials included in DCR's Direct Case.

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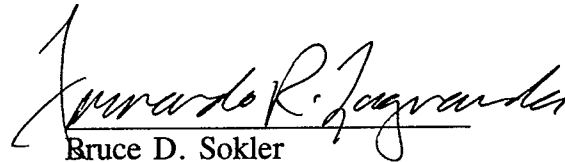
<sup>2/</sup> See letter of Fernando R. Laguarda to Steven M. Marks dated October 10, 1996, attached to the RIAA's Motion at Tab E.

<sup>3/</sup> These are set forth in the letters of Fernando R. Laguarda to Steven M. Marks attached to the RIAA's Motion at Tab L and Tab Q.

To the extent Dr. Woodbury's review of DCR's Direct Case helped frame his testimony in any way, he should not be precluded from relying upon it in testifying before the CARP.

The RIAA's claim of entitlement to an index of documents rings somewhat hollow in light of the paucity of documents produced by it in response to requests by DCR and the other Services. Despite repeated requests to do so, counsel for the RIAA has been unable to demonstrate how the rules require indexing in the manner sought. Because DCR has already complied in good faith with the RIAA's demands, the instant motion should be **DISMISSED**.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Bruce D. Sokler", written over a horizontal line.

Bruce D. Sokler  
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Dated: January 7, 1997